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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
8

9 PERRION PIPER

10 *Petitioner,*

11 vs.  
12

13 DWIGHT NEVEN, *et al.,*

14 *Respondents.*  
15

2:06-cv-01221-RCJ-GWF

ORDER

16 This habeas matter comes before the Court on the petitioner's motion (#24) for partial  
17 dismissal of his unexhausted claims. No opposition has been filed.

18 In its prior order (#23), the Court granted in part the respondents' motion to dismiss,  
19 and the Court held that Ground One and the ineffective assistance claim in Ground Three  
20 were not exhausted. Pursuant to *Rose v. Lundy*, 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d  
21 379 (1982), the Court gave petitioner an opportunity to seek either dismissal of the entire  
22 petition without prejudice, partial dismissal of only the unexhausted claims, or other  
23 appropriate relief

24 The motion for partial dismissal varies from the Court's prior order (#23) that granted  
25 the respondents' motion to dismiss in part. The present motion instead seeks dismissal as  
26 follows:

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28 Petitioner does hereby move for *partial* dismissal of  
Ground One, dismissing the ineffective assistance of counsel

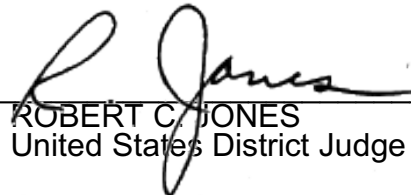
1 portion (unexhausted) *and proceeding on the due process claim*  
2 *of Ground One (exhausted)*, [and] [d]ismissing Ground Three  
ineffective assistance of counsel claim.

3 #24, at 1 (emphasis added). However, looking back at the record, respondents stated in the  
4 argument on Ground One that "it appears Piper has exhausted the due process component  
5 of this claim," #12, at 9, and respondents did not seek dismissal of any due process claim  
6 asserted under Ground One. The Court therefore will grant the petitioner's unopposed motion  
7 as submitted, without prejudice to any otherwise viable defense that respondents may have  
8 to any such due process claim.

9 IT THEREFORE IS ORDERED, and further pursuant to Local Rule LR 7-2(d), that  
10 petitioner's motion (#24) for partial dismissal is GRANTED and that the following claims are  
11 DISMISSED without prejudice for lack of exhaustion: (a) the claim of ineffective assistance  
12 of counsel in Ground One; and (b) the claim of ineffective assistance of counsel in Ground  
13 Three. All other claims in the petition remain before the Court, including any due process  
14 claims in Grounds One and Three.

15 IT FURTHER IS ORDERED that, within thirty (30) days of entry of this order, the  
16 respondents shall file a response to the claims remaining, which may include a renewed  
17 motion to dismiss addressing, *inter alia*, the issues deferred in the prior order (#23). Petitioner  
18 shall have thirty (30) days from service of the response within which to file an opposition to  
19 a motion to dismiss or a reply to an answer. The parties, if they wish, may incorporate their  
20 prior arguments in full regarding the procedural default and other issues on the prior motion  
21 to dismiss.

22 DATED: February 20, 2008

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26 ROBERT C. JONES  
United States District Judge  
27

28 (gsk-p3)